

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BECKLEY DIVISION**

RICHARD ALLEN COPE,

Plaintiff,

v.

CIVIL ACTION NO. 5:05-cv-01175

CHARLES T. FELTS, et al.,

Defendants.

**ORDER**

By Standing Order entered on July 21, 2004, and filed in this case on December 23, 2005, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings and a recommendation (“PF&R”). Magistrate Judge VanDervort filed a PF&R on February 26, 2007 [Docket 62]. In that filing, the magistrate judge recommended that this Court deny Defendants’ Motion to Dismiss, or in the alternative, Motion for Summary Judgment [Docket 33] as premature in view of Plaintiff’s Affidavit Pursuant to Rule 56(f), and refer this matter back to the magistrate judge for further proceedings.

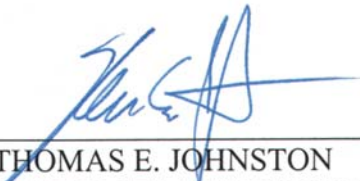
The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). In addition, failure to file timely objections constitutes a waiver of *de novo* review and the Defendants’ right to appeal this Court’s Order. *Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). Here, objections to Magistrate Judge VanDervort’s

PF&R were due by March 14, 2007, pursuant to 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b). To date, no objections have been filed.

Having reviewed the PF&R filed by Magistrate Judge VanDervort, the Court **ADOPTS** the findings and recommendation contained therein. Accordingly, the Court hereby **DENIES** Defendants' Motion to Dismiss, or in the alternative, Motion for Summary Judgment [Docket 33] without prejudice as premature in view of Plaintiff's Affidavit Pursuant to Rule 56(f), and **REFERS** this matter back to the magistrate judge for further proceedings.<sup>1</sup>

The Court **DIRECTS** the Clerk to send a copy of this Order to all counsel of record, the Plaintiff, *pro se*, and Magistrate Judge VanDervort.

ENTER: March 19, 2007

  
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THOMAS E. JOHNSTON  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> If Defendants choose to raise their motion again at a later time, they need not file entirely new briefs, but may, at their option, simply renew the motion by a supplemental memorandum in support.